

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6118) CASE CLOSURE UNDER THE
6 BOB ROGGIO FOR CONGRESS AND) ENFORCEMENT PRIORITY
7 ALEXANDRER SMITH,) SYSTEM
8 AS TREASURER)
9
10

11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated

13 are

14 forwarded to the Commission with a recommendation for dismissal. The Commission has
15 determined that pursuing low-rated matters compared to other higher-rated matters on the
16 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.
17 The Office of General Counsel scored MUR 6118 as a low-rated matter.

18 In this matter, the complainants, Jim Gerlach and Jim Gerlach for Congress allege that
19 Bob Roggio for Congress and Alexander F. Smith, in his official capacity as treasurer (the
20 "Committee"), violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b) by failing to include
21 appropriate disclaimers on three types of purported campaign communications. Specifically,
22 complainants supplied photocopied samples of the following:

- 23 • a billboard stating, in part, "Bob Roggio. Democrats for Congress. Business Leader;"
- 24 • a lawn sign asserting that "Gerlach Sold Us Out. Time to Vote Him Out;" and
- 25 • a bumper sticker, which complainants claim was part of a mass production by the
- 26 respondents, stating "FireGerlach.com. Bob Roggio for Congress."
- 27

28 In its response, the Committee acknowledges that its campaign billboards lacked the
29 requisite disclaimers, albeit for a short period of time. According to the Committee, it
30 submitted a design for its campaign billboard to its vendor on October 14, 2008, which
31 included the disclaimer "paid for and authorized by Bob Roggio for Congress." However, the

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1 Committee asserts that, due to a production error, the billboard manufactured by the vendor
2 left the disclaimer covered by other material. When the Committee became aware of the error,
3 on October 24, 2008, it states that it contacted the vendor, took down the billboards a few days
4 later, and replaced them with billboards containing the appropriate disclaimers. In response to
5 the allegation concerning the Committee's lawn sign, it stated that it did not pay for or
6 authorize the sign, nor did it have any knowledge of the sign prior to receiving the complaint.

7 Finally, the Committee points out that bumper stickers, such as those described in the
8 complaint, are exempt from the Commission's general disclaimer requirements as items upon
9 which disclaimers cannot conveniently be printed. *See* 11 C.F.R. § 110.11(f)(1)(i). Therefore,
10 the Committee claims that its bumper stickers did not violate the Commission's disclaimer
11 regulations.

12 Accordingly, in light of the Committee's response to the allegations and the timely
13 corrective action taken on its billboards, and in furtherance of the Commission's priorities and
14 resources, relative to other matters pending on the Enforcement docket, the Office of General
15 Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss
16 this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office
17 recommends that the Committee and its treasurer, in his official capacity, be cautioned that
18 their failure to include the requisite disclaimers on their campaign billboards was a potential
19 violation of 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b).

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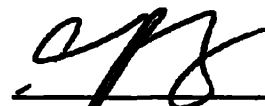
RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss
MUR 6118, send a cautionary notification to Bob Roggio for Congress and Alexander F.
Smith, in his official capacity as treasurer, close the file, and approve the appropriate letters.

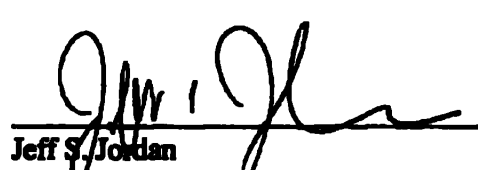
Thomasenia P. Duncan
General Counsel

3/24/09
Date

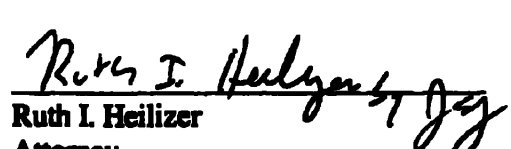
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